

## **EXHIBIT 2**

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CRAIG YATESUNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

C 07 4087

EDI

CRAIG YATES,

CASE NO.

Civil Rights

Plaintiff,

v.

**COMPLAINT FOR INJUNCTIVE &  
DECLARATORY RELIEF AND  
DAMAGES: DENIAL OF CIVIL  
RIGHTS OF A DISABLED PERSON IN  
VIOLATION OF THE AMERICANS  
WITH DISABILITIES ACT OF 1990,  
SECTION 504 OF THE  
REHABILITATION ACT OF 1973,  
AND CALIFORNIA'S DISABLED  
RIGHTS STATUTES**UNION SQUARE; CITY AND COUNTY  
OF SAN FRANCISCO; CITY OF SAN  
FRANCISCO UPTOWN PARKING  
CORPORATION; EMPORIO RULLI IL  
CAFFE UNION SQ.; EMPORIO RULLI  
IL CAFFE UNION SQ., INC.; and  
DOES 1 through 50, Inclusive,

Defendants.

**DEMAND FOR JURY TRIAL**[Proper Intradistrict  
Assignment:  
San Francisco/Oakland]

Plaintiff CRAIG YATES, on behalf of himself and all other similarly situated disabled persons, hereby complains of defendants UNION SQUARE; CITY AND COUNTY OF SAN FRANCISCO, a governmental entity; CITY OF SAN FRANCISCO UPTOWN PARKING CORPORATION, a California Public Benefit Corporation, also doing business as "Uptown Parking Corporation"; EMPORIO RULLI IL CAFFE UNION SQ.; EMPORIO RULLI IL CAFFE UNION SQ., INC., a California Corporation; and DOES 1 through 50, Inclusive (hereafter

**Complaint for Injunctive Relief and Damages**

1 "defendants"), and demands a trial by jury, and alleges as  
2 follows:

3  
4 **INTRODUCTION**

5 1. Plaintiff CRAIG YATES is a person with physical  
6 disabilities and utilizes a wheelchair for mobility. He files  
7 suit against the owners and operators of the City's newly  
8 renovated Union Square, which is described locally as the  
9 "heartbeat of San Francisco itself." His goal in this suit is a  
10 positive one: to achieve full and equal access to the square for  
11 all persons alike regardless of their physical condition.

12 2. The configuration of the square, its paths of  
13 travel, business, service and condiment counters and parking  
14 garage facilities and policies deny basic access to persons with  
15 disabilities. The barriers include the absence of a path of  
16 travel from the public right of way, inaccessible parking  
17 facilities, discriminatory policies, practices and procedures  
18 for using the parking garage, and inaccessible service counter  
19 facilities. These and other facilities at the square all fail  
20 to provide the "full and equal" access required by Title II of  
21 the Americans With Disabilities Act of 1990, Section 504 of the  
22 Rehabilitation Act of 1973, the California Disabled Rights Acts  
23 (sections 54 and 54.1ff Civil Code), and Title 24 of the  
24 California Code of Regulations (now known as the California  
25 Building Code). As a result, plaintiff has been continuously  
26 denied access and/or deterred from visiting the square during  
27 the two years preceding the filing of this complaint, suffered  
28 violation of his Civil Rights to full and equal access, suffered

1 a denial of his right to due process, was embarrassed and  
2 humiliated, and suffered statutory and general damages.  
3 Plaintiff seeks injunctive and injunctive relief relief  
4 requiring provision of access under the Americans With  
5 Disabilities Act of 1990 at section 308(a), and section 504 of  
6 the Rehabilitation Act of 1973; injunctive relief for "full and  
7 equal access" under California law; and statutory damages for  
8 plaintiff under California law.

9  
10 **JURISDICTION AND VENUE**

11 3. This Court has jurisdiction of this action  
12 pursuant to 28 U.S.C. 1331 for violations of the Americans with  
13 Disabilities Act of 1990, 42 U.S.C. 12101, et seq. Pursuant to  
14 pendant jurisdiction, attendant and related causes of action,  
15 arising from the same facts, are also brought under California  
16 law, including but not limited to violations of California  
17 Health & Safety Code Sections 19955 et seq., including Section  
18 19959; Title 24 California Code of Regulations; and California  
19 Civil Code Sections 54 and 54.1 et seq.

20 4. Venue is proper in this court pursuant to  
21 28 U.S.C. 1391(b) and is founded on the fact that the real  
22 property which is the subject of this action is located in this  
23 district and that plaintiff's causes of action arose in this  
24 district.

25 5. **Intradistrict Jurisdiction.** Under intradistrict  
26 as the real property that is the subject of this action is  
27 located in the San Francisco/Oakland intradistrict and  
28 plaintiff's causes of action arose in the San Francisco/Oakland

1 intradistrict (a property located in San Francisco).

2           6. Plaintiff CRAIG YATES has timely complied with  
3 applicable government claims procedures relative to his state  
4 law claims of discrimination. He has served a government claim  
5 on the interested respondent, which was formally rejected.  
6 Plaintiff's claim alleges continuous and ongoing discrimination.

7           7. On information and belief, defendants UNION  
8 SQUARE; CITY AND COUNTY OF SAN FRANCISCO; CITY OF SAN FRANCISCO  
9 UPTOWN PARKING CORPORATION; EMPORIO RULLI IL CAFFE UNION SQ.;  
10 EMPORIO RULLI IL CAFFE UNION SQ., INC.; and DOES 1 through 50,  
11 Inclusive, routinely and automatically reject claims alleging  
12 damage due to disabled access discrimination, such as the claims  
13 presented by the plaintiff in this case. Further, because  
14 plaintiff is deterred from making use of the square on sustained  
15 basis, the claims presented here allege continuous and ongoing  
16 discrimination. Plaintiff's complaints, both written and oral,  
17 to city and county personnel have been largely ignored.  
18 Plaintiff alleges that it would be a futile gesture to file  
19 further government claims relating to plaintiff's continuous  
20 visits square, which are certain to occur on regular basis  
21 following the filing of this complaint. Therefore, plaintiff  
22 reserves, and will seek to supplement his complaint at time of  
23 trial as to his subsequent use of the square, according to  
24 proof.

25  
26 **PARTIES**

27           8. At all times relevant to this complaint,  
28 plaintiff was physically handicapped, and qualified as a "person

1 with a disability," as these terms are used under California law  
2 and under federal laws including but not limited to Title II of  
3 the Americans With Disabilities Act of 1990. (These terms,  
4 "physically handicapped person," "physically disabled person,"  
5 and "person with disabilities," will be used interchangeably  
6 throughout this complaint.) Plaintiff is physically disabled,  
7 as defined by all applicable California and United States laws,  
8 and requires the use of a wheelchair for traveling about in  
9 public places.

10 9. At all times relevant herein, defendants UNION  
11 SQUARE; CITY AND COUNTY OF SAN FRANCISCO; CITY OF SAN FRANCISCO  
12 UPTOWN PARKING CORPORATION; EMPORIO RULLI IL CAFFE UNION SQ.;  
13 EMPORIO RULLI IL CAFFE UNION SQ., INC.; and DOES 1 through 50,  
14 were and/or are the controlling public entities, or the current,  
15 future or prospective owners and operators, lessors and/or  
16 lessees of public facilities, and subject to the requirements of  
17 California State law requiring full and equal access to public  
18 facilities pursuant to Sections 4450 et seq. and 11135  
19 Government Code; Sections 54.1 and 54.3 Civil Code; and subject  
20 to Title II of the Americans With Disabilities Act of 1990,  
21 Section 504 of the Rehabilitation Act of 1973, and to all other  
22 legal requirements referred to in this complaint. Plaintiff  
23 does not know the relative responsibilities of defendants in the  
24 ownership, control, and operation of the facilities herein  
25 complained of, and alleges a joint venture and common enterprise  
26 by all such defendants.

27 10. Plaintiff is informed and believes that each of  
28 the defendants herein, including DOES 1 through 50, inclusive,

1 is the joint authority, independent governmental body,  
2 controlling public entity, owner, constructive owner, beneficial  
3 owner, trust, trustee, agent, ostensible agent, alter ego,  
4 master, servant, employer, employee, representative, franchiser,  
5 franchisee, joint venturer, partner, associate, parent company,  
6 subsidiary, board, commission, department, or other governmental  
7 agency, representative, or such similar capacity, of each of the  
8 other defendants, and was at all times acting and performing, or  
9 failing to act or perform, within the course and scope of his,  
10 her or its authority as a joint authority, independent  
11 governmental body, controlling public entity, owner,  
12 constructive owner, beneficial owner, agent, trust, trustee,  
13 ostensible agent, alter ego, master, servant, employer,  
14 employee, representative, franchiser, franchisee, joint  
15 venturer, partner, associate, parent company, subsidiary, board,  
16 commission, department, or other governmental agency,  
17 representative, or such similar capacity, and with the  
18 authorization, consent, permission or ratification of each of  
19 the other defendants, and is responsible in some manner for the  
20 acts and omissions of the other defendants in proximately  
21 causing the violations and damages complained of herein, and  
22 have approved or ratified each of the acts or omissions of each  
23 other defendant, as herein described. Plaintiff will seek leave  
24 to amend when the true names, capacities, connections, and  
25 responsibilities of defendants UNION SQUARE; CITY AND COUNTY OF  
26 SAN FRANCISCO; CITY OF SAN FRANCISCO UPTOWN PARKING CORPORATION;  
27 EMPORIO RULLI IL CAFFE UNION SQ.; EMPORIO RULLI IL CAFFE UNION  
28 SQ., INC.; and DOES 1 through 50, are ascertained.

1 **FACTUAL ALLEGATIONS**

2 11. At all times relevant defendants were and/or are  
3 the controlling public entities, or the entities distributing  
4 state, federal and/or public funds for use at the subject Union  
5 Square, and/or the owners and operators, lessors and/or lessees  
6 of such facility. On information and belief, such facilities  
7 were constructed, directly or indirectly, by use of federal,  
8 state, county and/or municipal funds by and through owner and  
9 operator defendants, subjecting such facilities to the  
10 requirements of Section 4450-4456 Government Code, in effect  
11 since January 1, 1968; Government Code Section 11135; Section  
12 504 of the Rehabilitation Act of 1973; and Title II of the  
13 Americans With Disabilities Act of 1990.

14 12. Further, the subject square and its facilities,  
15 including its parking facilities, paths of travel, entrance  
16 facilities, counters, and other facilities, are each a "public  
17 accommodation or facility" subject to the requirements of  
18 Government Code sections 4450 et seq., and of the California  
19 Civil Code sections 51, 54, 54.1, and 54.3. On information and  
20 belief, each such facility has, since January 1, 1968, undergone  
21 unfinished "new construction," and/or "alterations, structural  
22 repairs, and additions," each of which has subjected the subject  
23 Union Square and its public facilities to state disabled access  
24 requirements per section 4456 Government Code, and since July 1,  
25 1982, per provisions of Title 24 of the California Code of  
26 Regulations.

27 13. Plaintiff seeks deterrence damages. The barriers  
28 are pervasive and are encountered by plaintiff and other



1 similarly situated square users with mobility disabilities  
2 almost everywhere one attempts to travel at the subject square  
3 facility. On daily basis during the two years preceding the  
4 filing of this complaint, plaintiff CRAIG YATES has been denied  
5 the right and desire to visiting the subject square by these  
6 substantial barriers, which include:

7 (1) Failure to provide a safe and accessible  
8 path of travel from the southern boundary to the square.

9 (2) Failure to provide safe and accessible  
10 disabled high-top van parking facilities fully complying with  
11 the requirements of the code.

12 (3) Failure to provide an accessible and safe  
13 path of travel for use by persons with disabilities from the  
14 public parking areas to the square, including accessible ramp  
15 facilities.

16 (4) Failure to provide open and accessible  
17 ticket payment facilities.

18 (5) Failure to provide accessible service and  
19 condiment counter facilities.

20 (6) Failure to modify, draft or implement  
21 policies, practices, and procedures, and provide adequate  
22 training and information to staff, so as to maintain accessible  
23 parking facilities and their availability, or otherwise provide  
24 access through reasonable alternative accommodations and  
25 methods.

26 14. On information and belief, defendants have failed  
27 to provide access to multiple other facilities on site,  
28 including an adequate number of disabled parking facilities.

1           15. Plaintiff has complained in writing to  
2 defendants, and, on information and belief defendants have  
3 knowledge, or received notice, of plaintiff's complaints and  
4 the inability of persons like plaintiff to use facilities at  
5 the subject Union Square. Despite knowledge of the access  
6 problems, and complaints from other disabled patrons, and the  
7 passage of extended time since plaintiff and other disabled  
8 persons first provided notice of these deficiencies,  
9 defendants have failed to investigate these problems, and have  
10 failed to take the necessary action to provide legally  
11 required access features to allow "full and equal" use of the  
12 premises by physically disabled persons.

13           16. The removal of all such barriers was required  
14 by Title II of the ADA, section 302 and/or section 303 of the  
15 ADA, section 504 of the Rehabilitation Act of 1973, and  
16 California law.

17           17. On information and belief, as a result of all  
18 defendants' above stated acts and omissions, plaintiff  
19 suffered loss of his Civil Rights, suffered physical stress,  
20 strain and exhaustion in attempting to negotiate barriers at  
21 the subject Union Square, suffered physical pain and  
22 discomfort, and other physical, psychological, and emotional  
23 damages, pain and suffering, all to his damages.

24           18. Moreover, plaintiff and other similarly  
25 situated disabled persons will continue to be damaged on a  
26 daily basis as long as defendants fail to provide proper  
27 disabled access in the respects complained of, as they will  
28 either be discouraged from using subject Union Square to

1 pursue square business, or would make the visit despite the  
2 obstacles to access they would have to encounter, and suffer  
3 additional discriminatory experiences.

4 19. Plaintiff has no adequate remedy at law as to  
5 the recurring damages facing him each time he returns to these  
6 inaccessible facilities. Unless the relief requested herein  
7 is granted, plaintiff and many other physically disabled  
8 persons will each suffer irreparable harm in that their  
9 fundamental right to accessible public facilities while  
10 patronizing the subject Union Square will be denied and  
11 abridged.

12 **FIRST CAUSE OF ACTION:**

13 **DISCRIMINATION IN VIOLATION OF TITLE II**

14 **OF THE AMERICANS WITH DISABILITIES ACT OF 1990**

15 **(Against Defendants UNION SQUARE; CITY AND COUNTY OF SAN**  
16 **FRANCISCO; CITY OF SAN FRANCISCO UPTOWN PARKING CORPORATION; and**  
17 **DOES 1 through 50, Inclusive)**

18 20. Plaintiff repleads and incorporates by reference,  
19 as if fully set forth again herein, the allegations contained in  
20 paragraphs 1 through 19 of this complaint and incorporates them  
21 herein as if separately repled.

22 21. At all times hereinmentioned, plaintiff was  
23 entitled to the protections of the "Public Services" provisions  
24 of Title II of the Americans With Disabilities Act of 1990  
25 (hereinafter referred to alternatively as the "ADA"). Pursuant  
26 to 42 U.S.C. section 12132, section 202 of Title II, no  
27 qualified individual with a disability shall, by reason of such  
28 disability, be excluded from participation in or be denied the

1 benefits of the services, programs or activities of a public  
2 entity, or be subjected to discrimination by any such entity.  
3 Defendants (UNION SQUARE; CITY AND COUNTY OF SAN FRANCISCO; CITY  
4 OF SAN FRANCISCO UPTOWN PARKING CORPORATION; and DOES 1 through  
5 50, Inclusive), were and are such public entities or agents who  
6 implemented the services for such agencies. Plaintiff was at  
7 all times relevant herein a qualified individual with a  
8 disability for all purposes under the ADA.

9           22. Under Title II, governmental entities were  
10 required by the compliance deadline of January 26, 1992 to  
11 perform a self-evaluation and implement a "transition plan,"  
12 either bringing their facilities into compliance with the ADA  
13 accessibility guidelines or altering their programs to  
14 compensate for the accessibility deficiencies discovered in the  
15 ADA self evaluation process. Removal of barriers and provision  
16 of access is further required under section 504 of the  
17 Rehabilitation Act of 1973 for all recipients of federal  
18 financial assistance used to fund the operations of the square  
19 and its parking garage and other facilities, and under section  
20 11135 Government Code for the receipt of similar state funding.

21           23. The defendant government entities involved have,  
22 in violation of Title II of the Americans With Disabilities Act  
23 of 1990, failed to ensure that individuals with physical  
24 disabilities, such as plaintiff, are not excluded from services,  
25 programs and activities at the subject Union Square, including  
26 those specified in paragraphs 13 through 14.

27           24. As a result of such discrimination, in violation  
28 of section 202 of the ADA, plaintiff is entitled to the

1 remedies, procedures and rights set forth in section 505 of the  
2 Rehabilitation Act of 1973 (29 U.S.C. §794a), as provided by  
3 section 203 of the ADA, including injunctive relief and damages  
4 for violation of his Civil Rights, as previously plead.

5 25. On information and belief, to the date of filing  
6 of the original complaint, the defendants have failed to make  
7 any of their facilities complained of and described herein  
8 properly accessible to and usable by physically disabled  
9 persons, as required by law.

10 26. Plaintiff requests appropriate damages for each  
11 of his complained of experiences for the two year period  
12 preceding the filing of this complaint, as well as litigation  
13 expenses and costs, and reasonable attorneys' fees as provided  
14 by law.

15 27. Plaintiff is further informed and believes that  
16 during the applicable statutory periods the named governmental  
17 defendants and each of them have been made aware orally, in  
18 writing, and through the media and governmental sources of the  
19 inaccessibility of their public facility/business to disabled  
20 persons, such as plaintiff, and other persons with disabilities  
21 similarly situated, and of the federal and state legal  
22 obligations of owners and operators of public facilities to make  
23 their facilities accessible to disabled persons. Despite being  
24 informed of such effect on disabled persons and the manner in  
25 which their practices and lack of accessible facilities were  
26 continuing to discriminate against disabled persons on a day-to-  
27 day basis, said defendants and each of them knowingly and  
28 willfully failed and refused to take proper steps to rectify

1 this situation and to provide full and equal access for disabled  
2 persons to each public facility referred to herein.

3 28. Plaintiff requests that an injunction be ordered  
4 requiring that defendants make all such facilities herein  
5 described, accessible to and usable by disabled persons, and  
6 instruct all employees as to proper policies to facilitate  
7 access, and set up practices and procedures to ensure that no  
8 disabled person who is mobility impaired is denied the use of  
9 the aforementioned facilities that are open to the general  
10 public, and that all such facilities be made "accessible to and  
11 usable by" physically disabled persons.

12 WHEREFORE, plaintiff prays that this court grant  
13 relief as requested hereinbelow.

14 **SECOND CAUSE OF ACTION:**

15 **VIOLATION OF §504 OF THE REHABILITATION ACT OF 1973**

16 **(Against Defendants UNION SQUARE; CITY AND COUNTY OF SAN**  
17 **FRANCISCO; CITY OF SAN FRANCISCO UPTOWN PARKING CORPORATION; and**  
18 **DOES 1 through 50, Inclusive)**

19 29. Plaintiff repleads and incorporates by reference,  
20 as if fully set forth again herein, the allegations contained in  
21 paragraphs 1 through 28 of this complaint and incorporates them  
22 herein as if separately replied.

23 30. Plaintiff is informed and believes and therefore  
24 alleges that certain defendants, UNION SQUARE; CITY AND COUNTY  
25 OF SAN FRANCISCO; CITY OF SAN FRANCISCO UPTOWN PARKING  
26 CORPORATION; and DOES 1 through 50, Inclusive, are now or have  
27 been in the past at times relevant to this complaint, recipients  
28 of federal financial assistance and that part of that financial

1 assistance is used or has been used to fund the operations of  
2 some or all of the specific buildings and facilities described  
3 herein, and the activities which take place therein, or such  
4 defendants lease, or operate upon, facilities that have been  
5 subject to receipt of financial assistance.

6 31. By their actions and/or inactions in denying  
7 disabled accessible facilities at the facilities and buildings  
8 specified, defendants UNION SQUARE; CITY AND COUNTY OF SAN  
9 FRANCISCO; CITY OF SAN FRANCISCO UPTOWN PARKING CORPORATION; and  
10 DOES 1 through 50, Inclusive, have violated plaintiff's rights  
11 under section 504 of the Rehabilitation Act of 1973, 29 U.S.C.  
12 §794, and the regulations promulgated thereunder, the Uniform  
13 Federal Accessibility Standards ("UFAS").

14 32. By their actions or inactions in denying  
15 plaintiff his right to have the same access to the same  
16 programs, activities and environment as non-disabled persons,  
17 and by otherwise discriminating against plaintiff solely by  
18 reason of his physical disabilities, defendants and each of them  
19 have violated plaintiff's rights under section 504 of the  
20 Rehabilitation Act of 1973 and the regulations promulgated  
21 thereunder. Plaintiff seeks damages for the ongoing and  
22 continuous denial of his Civil Rights from the date of his  
23 initial attempts to use the square, or the dates he was deterred  
24 (preceding back to two years before the filing of the original  
25 complaint) to the time of trial or remediation, and for  
26 physical, mental and emotional injury, all to his damages  
27 according to proof. Further, plaintiff seeks injunctive relief  
28 requesting that the Court order defendants to correct the access



1 deficiencies complained of herein so that plaintiff, and other  
2 similarly situated users of the subject Union Square, will not  
3 continue to be discriminated against.

4 33. Plaintiff has no adequate remedy at law as to  
5 facing the recurring damages facing him each time that he  
6 returns to these inaccessible facilities, and unless the relief  
7 requested herein is granted, plaintiff and other disabled  
8 persons will each suffer irreparable injury by the deprivation  
9 of access to the specified public facilities operated by  
10 defendants.

11 WHEREFORE, plaintiff prays that the court grant relief  
12 as requested hereinbelow.

13 **THIRD CAUSE OF ACTION:**

14 **VIOLATIONS OF THE AMERICANS WITH DISABILITIES ACT OF 1990**

15 **42 USC §§ 12101ff**

16 34. Plaintiff repleads and incorporates, as if fully  
17 set forth again herein, the factual allegations contained in  
18 paragraphs 1 through 33, above.

19 35. This cause of action pertains to all private  
20 public accommodations referenced in this complaint, including  
21 Rulli's and potentially the parking garage.

22 36. Pursuant to law, in 1990 the United States  
23 Congress made findings per 42 U.S.C. Section 12101 regarding  
24 physically disabled persons, finding that laws were needed to  
25 more fully protect "some 43 million Americans with one or more  
26 physical or mental disabilities;" that "historically society has  
27 tended to isolate and segregate individuals with disabilities;"  
28 that "such forms of discrimination against individuals with



1 disabilities continue to be a serious and pervasive social  
2 problem;" that "the Nation's proper goals regarding individuals  
3 with disabilities are to assure equality of opportunity, full  
4 participation, independent living and economic self sufficiency  
5 for such individuals;" and that "the continuing existence of  
6 unfair and unnecessary discrimination and prejudice denies  
7 people with disabilities the opportunity to compete on an equal  
8 basis and to pursue those opportunities for which our free  
9 society is justifiably famous..."

10 37. Congress stated as its purpose in passing the  
11 Americans with Disabilities Act (42 USC § 12101(b)):

12 It is the purpose of this act -

13 (1) to provide a clear and comprehensive  
14 national mandate for the elimination of  
15 discrimination against individuals with  
16 disabilities;

17 (2) to provide clear, strong, consistent,  
18 enforceable standards addressing discrimination  
19 against individuals with disabilities;

20 (3) to ensure that the Federal government plays  
21 a central role in enforcing the standards  
22 established in this act on behalf of individuals  
23 with disabilities; and

24 (4) to invoke the sweep of Congressional  
25 authority, including the power to enforce the 14th  
26 Amendment and to regulate commerce, in order to  
27 address the major areas of discrimination faced day  
28 to day by people with disabilities. (Emphasis

1 added)

2 38. As part of the Americans with Disabilities Act,  
3 Public Law 101-336, (hereinafter the "ADA"), Congress passed  
4 "Title III - Public Accommodations and Services Operated by  
5 Private Entities" (42 U.S.C 12181ff). Among "private entities"  
6 which are considered "public accommodations" and "commercial  
7 facilities."

8 39. Pursuant to Section 302 [42 U.S.C 12182], "[n]o  
9 individual shall be discriminated against on the basis of  
10 disability in the full and equal enjoyment of the goods,  
11 services, facilities, privileges, advantages, or accommodations  
12 of any place of public accommodation by any person who owns,  
13 leases, or leases to, or operates a place of public  
14 accommodation."

15 40. Among the general prohibitions of discrimination  
16 included in Section 302(b)(1)(A) are the following:

17 § 302(b)(1)(A)(i): "DENIAL OF PARTICIPATION. - It  
18 shall be discriminatory to subject an individual or class  
19 of individuals on the basis of a disability or disabilities  
20 of such individual or class, directly, or through  
21 contractual, licensing, or other arrangements, to a denial  
22 of the opportunity of the individual or class to  
23 participate in or benefit from the goods, services,  
24 facilities, privileges, advantages, or accommodations of an  
25 entity."

26 § 302(b)(1)(A)(ii): "PARTICIPATION IN UNEQUAL BENEFIT -  
27 It shall be discriminatory to afford an individual or class  
28 of individuals, on the basis of a disability or disabilities

1 of such individual or class, directly, or through  
2 contractual, licensing, or other arrangements with the  
3 opportunity to participate in or benefit from a good,  
4 service, facility, privilege, advantage, or accommodation  
5 that is not equal to that afforded to other individuals."

6 § 302(b)(1)(A)(iii): "SEPARATE BENEFIT. - It shall be  
7 discriminatory to provide an individual or class of  
8 individuals, on the basis of a disability or disabilities  
9 of such individual or class, directly, or through  
10 contractual, licensing, or other arrangements with a good,  
11 service, facility, privilege, advantage, or accommodation  
12 that is different or separate from that provided to other  
13 individuals, unless such action is necessary to provide the  
14 individual or class of individuals with a good, service,  
15 facility, privilege, advantage, or accommodation, or other  
16 opportunity that is as effective as that provided to  
17 others."

18 41. Among the specific prohibitions against  
19 discrimination in the ADA include the following:

20 § 302(b)(2)(A)(ii): "A failure to make reasonable  
21 modifications in policies, practices or procedures when  
22 such modifications are necessary to afford such goods,  
23 services, facilities, privileges, advantages or  
24 accommodations to individuals with disabilities..."

25 § 302(b)(2)(A)(iii): "A failure to take such steps as  
26 may be necessary to ensure that no individual with a  
27 disability is excluded, denied services, segregated or  
28 otherwise treated differently than other individuals

1 because of the absence of auxiliary aids and services,  
2 unless the entity can demonstrate that taking such steps  
3 would fundamentally alter the nature of the good, service,  
4 facility, privilege, advantage, or accommodation being  
5 offered or would result in an undue burden;"

6 § 302(b)(2)(A)(iv): "A failure to remove architectural  
7 barriers, and communication barriers that are structural in  
8 nature, in existing facilities... where such removal is  
9 readily achievable;"

10 § 302(b)(2)(A)(v): "Where an entity can demonstrate  
11 that the removal of a barrier under clause (iv) is not  
12 readily achievable, a failure to make such goods, services,  
13 facilities, privileges, advantages, or accommodations  
14 available through alternative methods if such methods are  
15 readily achievable." The acts and omissions of defendants  
16 set forth herein were in violation of plaintiff's rights  
17 under the ADA, Public Law 101-336, and the regulations  
18 promulgated thereunder, 28 CFR Part 36ff.

19 42. The removal of each of the barriers complained of  
20 by plaintiff as hereinabove alleged (i.e., in paragraphs 12  
21 through 14, above) were - at all times on or after January 26,  
22 1992 - "readily achievable."

23 43. Further, at all times herein mentioned,  
24 modification of or removal of these barriers was "readily  
25 achievable" under the factors specified in the Americans with  
26 Disabilities Act of 1990, including but not limited to  
27 section 301(9) [42 U.S.C. 12181], and the Regulations adopted  
28 thereto.

1           44. Further, if defendants are collectively able to  
2 "demonstrate" that it was not "readily achievable" for  
3 defendants to remove each of such barriers, defendants have  
4 failed to make the required services available through  
5 alternative methods which were readily achievable, as required  
6 by Section 302 of the ADA [42 U.S.C. 12182].

7           45. "Discrimination" is further defined under  
8 Section 303(a)(2) of the ADA, for a facility or part thereof  
9 that was altered after the effective date of Section 303 of the  
10 ADA in such a manner as to affect or that could affect the  
11 usability of the facility or part thereof by persons with  
12 disabilities, to include per Section 303(a)(2) [42 U.S.C.  
13 12183], "a failure to make alterations in such a manner that, to  
14 the maximum extent feasible, the altered portions of the  
15 facility are readily accessible to and usable by individuals  
16 with disabilities, including individuals who use wheelchairs."  
17 Additionally, for alterations to areas of a facility involving a  
18 "primary function," discrimination under the ADA, per Section  
19 303(a)(2) (42 U.S.C. 12183), also includes the failure of an  
20 entity "to make the alterations in such a manner that, to the  
21 maximum extent feasible, the path of travel to the altered area  
22 and the bathrooms, telephones, and drinking fountains serving  
23 the altered area, are readily accessible to and usable by  
24 individuals with disabilities." On information and belief, the  
25 subject building constitutes a "commercial facility," and  
26 defendants have, since the date of enactment of the ADA,  
27 performed alterations (including alterations to areas of primary  
28 function) to the subject building and its facilities, public

1 accommodations, and commercial facilities, which fail to provide  
2 facilities and paths of travel to such areas that are readily  
3 accessible to and usable by individuals with disabilities, in  
4 violation of Section 303(a)(2), and the regulations promulgated  
5 thereunder, 28 CFR Part 36ff.

6 46. Pursuant to the Americans with Disabilities Act,  
7 42 USC 12188ff, Section 308, plaintiff is entitled to the  
8 remedies and procedures set forth in Section 204, subsection  
9 (a), of the Civil Rights Act of 1964 (42 USC 2000a-3, at  
10 subsection (a)), as plaintiff is being subjected to  
11 discrimination on the basis of disability in violation of this  
12 title or has reasonable grounds for believing that he is about  
13 to be subjected to discrimination in violation of Sections 302  
14 and 303. On information and belief, defendants have continued  
15 to violate the law and deny the rights of plaintiff and of other  
16 disabled persons to access this public accommodation since the  
17 visit of plaintiff on or about April 18, 2005. Pursuant to  
18 Section 308(a)(2), "[i]n cases of violations of  
19 Section 302(b)(2)(A)(iv)... injunctive relief shall include an  
20 order to alter facilities to make such facilities readily  
21 accessible to and usable by individuals with disabilities to the  
22 extent required by this title."

23 47. As a result of defendants' acts and omissions in  
24 this regard, plaintiff has been required to incur legal expenses  
25 and attorney fees, as provided by statute, in order to enforce  
26 plaintiff's rights and to enforce provisions of the law  
27 protecting access for disabled persons and prohibiting  
28 discrimination against disabled persons. Plaintiff therefore

1 seeks recovery of all reasonable attorneys' fees, litigation  
2 expenses (including expert fees) and costs, pursuant to the  
3 provisions of Section 505 of the ADA (42 U.S.C. 12205) and the  
4 Department of Justice's regulations for enforcement of Title III  
5 of the ADA (28 CFR 36.505). Additionally, plaintiff's lawsuit  
6 is intended not only to obtain compensation for damages to  
7 plaintiff, but also to require the defendants to make their  
8 facilities accessible to all disabled members of the public,  
9 justifying "public interest" attorneys' fees pursuant to the  
10 provisions of California Code of Civil Procedure Section 1021.5.

11 WHEREFORE, plaintiffs prays that this Court grant  
12 relief as hereinafter stated:

13 **FOURTH CAUSE OF ACTION:**

14 **DENIAL OF FULL AND EQUAL ACCESS TO A PERSON WITH A DISABILITY**  
15 **IN A PUBLIC FACILITY,**  
16 **IN VIOLATION OF CALIFORNIA'S DISABLED ACCESS STATUTES**

17 48. Plaintiff repleads and incorporates by reference,  
18 as if fully set forth again herein, the allegations contained in  
19 Paragraphs 1 through 47 of this complaint and incorporates them  
20 herein as if separately repled.

21 49. Plaintiff CRAIG YATES, and other similarly  
22 situated physically disabled persons (whose physical conditions  
23 require the use of a wheelchair or other mobility device and/or  
24 who have vision impairments) are unable to use public facilities  
25 at subject Union Square on a "full and equal" basis unless such  
26 facilities are brought into compliance with the provisions of  
27 California Health & Safety Code sections 19955 et seq.  
28 Plaintiff is a member of that portion of the public whose rights

1 are protected by the provisions of sections 19955 et seq. Health  
2 & Safety Code.

3 50. Under section 54.1 Civil Code, persons with  
4 disabilities are entitled to "full and equal access" to public  
5 accommodations. "Public accommodations" are further defined as  
6 a building, structure, facility complex, or improved area which  
7 is used by the general public and shall include parking lots,  
8 paths of travel, counters, and attendant facilities.

9 51. Defendants participate in the operation of the  
10 subject public accommodation, subjecting the property and all  
11 such defendants to the requirements of California's Disabled  
12 Rights statutes.

13 52. Health & Safety Code Section 19955 provides in  
14 pertinent part:

15 (a) The purpose of this part is to insure that public  
16 accommodations or facilities constructed in this state with  
17 private funds adhere to the provisions of Chapter 7  
18 (commencing with § 4450) of Division 5 of Title 1 of the  
19 Government Code. For the purposes of this part "public  
20 accommodation or facilities" means a building, structure,  
21 facility, complex, or improved area which is used by the  
22 general public and shall include auditoriums, hospitals,  
23 theaters, restaurants, hotels, motels, stadiums, and  
24 conventions centers.

25 53. Health and Safety Code Section 19956, which  
26 appears in the same chapter as 19955, provides, in pertinent  
27 part: "[a]ll public accommodations constructed in this state  
28 shall conform to the provisions of Chapter 7 (commencing with



1 § 4450) of Division 5 of Title 1 of the Government Code...."

2 54. Section 19956 Health & Safety Code was operative  
3 July 1, 1970, and is applicable to all public accommodations  
4 constructed or altered after that date. On information and  
5 belief, portions of the subject Marriott were constructed and/or  
6 altered after July 1, 1970, and portions of the subject building  
7 were structurally remodeled, altered and have undergone  
8 structural repairs or additions after July 1, 1970. Such  
9 construction required such building and its public accommodation  
10 facilities to be subject to the requirements of Part 5.5,  
11 Sections 19955, et seq., of the Health and Safety Code, which  
12 requires provision of access upon "alterations, structural  
13 repairs or additions" per Section 19959 Health & Safety Code, or  
14 upon a change of occupancy (a form of "alteration").

15 55. Multiple construction, alterations, structural  
16 repairs and/or additions were completed on the subject Union  
17 Square property after the January 1, 1968 effective date of  
18 Government Code Sections 4450 et seq., and the July 1, 1970  
19 effective date of Healthy & Safety Code Section 19955-19959,  
20 legally requiring that proper access for disabled persons be  
21 provided in each and every regard complained of in the  
22 Complaint.

23 56. Construction or alteration at such facilities  
24 also triggered access requirements pursuant to section 4456  
25 Government Code and Title 24 of the California Code of  
26 Regulations. Further, section 19955 Health & Safety Code also  
27 requires that, "[w]hen sanitary facilities are made available  
28 for the public, clients or employees in such accommodations or

1 facilities, they shall be made available for the physically  
2 handicapped." Title 24, California Code of Regulations  
3 (formerly known as the California Administrative Code and now  
4 known as the California Building Code), was in effect at the  
5 time of each alteration which, on information and belief,  
6 occurred at such public facility since January 1, 1982, thus  
7 requiring access complying with the specifications of Title 24  
8 whenever each such "alteration, structural repair or addition"  
9 is carried out. Title 24 imposes additional access requirements  
10 with which defendants have not complied, including additional  
11 requirements for accessible restrooms which serve the areas of  
12 alteration.

13 57. As a result of the actions and failure to act of  
14 defendants and each of them, and as a result of the failure to  
15 provide proper disabled accessible facilities as above  
16 described, plaintiff CRAIG YATES was denied his Civil Rights,  
17 including his right to full and equal access to public  
18 facilities, was embarrassed and humiliated, suffered physical,  
19 psychological and mental injuries and emotional distress, all to  
20 the general damages of plaintiff in an amount within the  
21 jurisdiction of this Court.

22 58. Plaintiff seeks damages on a continuing and  
23 ongoing basis for the period preceding within the six months  
24 before the filing of his original government claim, and the  
25 continuous and ongoing damages suffered thereafter.

26 59. As a result of the defendants' continuing failure  
27 to provide proper access for disabled persons to use the public  
28 facilities, plaintiff has continually been denied his rights to

1 full and equal access to subject Union Square and its attendant  
2 facilities on a daily basis for the above specified period up to  
3 the filing of this complaint and continuing until defendants  
4 provide accessible facilities in each of the respects complained  
5 of herein.

6 60. The acts and omissions of defendants as  
7 complained of herein are continuing on a day by day basis to  
8 have the effect of wrongfully excluding plaintiff and other  
9 members of the public who are physically disabled wheelchair  
10 users from full and equal access to the public facilities  
11 involved. Such acts and omissions continue to treat plaintiff  
12 as inferior and a second class citizen and serve to discriminate  
13 against him on the sole basis that he is physically disabled and  
14 requires the use of a wheelchair for movement in public places;  
15 plaintiff is unable, so long as such acts and omissions of  
16 defendants continue, to achieve full and equal access to these  
17 public facilities. The acts of defendants have proximately  
18 caused and will continue to cause irreparable injury to  
19 plaintiff if not enjoined by this court.

20 61. WHEREFORE, plaintiff asks this court to  
21 preliminarily and permanently enjoin any continuing refusal by  
22 those defendants which currently own, operate or lease the  
23 premises, or who control such premises as the operating public  
24 entities, to grant such access to plaintiff and other similarly  
25 situated persons, and to require such defendants to comply  
26 forthwith with the applicable statutory requirements relating to  
27 access for the disabled. Such injunctive relief is provided by  
28 section 19953 Health & Safety Code and California Civil Code

1 section 55. Plaintiff further request that the court award  
2 statutory attorneys' fees, litigation expenses and costs to  
3 plaintiff pursuant to section 19953 Health & Safety Code, Civil  
4 Code section 55, and Code of Civil Procedure section 1021.5, all  
5 as hereinafter prayed for.

6 **FIFTH CAUSE OF ACTION:**

7 **VIOLATION OF CALIFORNIA GOVERNMENT CODE §§ 4450 ET SEQ.**

8 **(Against Defendants UNION SQUARE; CITY AND COUNTY OF SAN**  
9 **FRANCISCO; CITY OF SAN FRANCISCO UPTOWN PARKING CORPORATION; and**  
10 **DOES 1 through 50, Inclusive)**

11 62. Plaintiff repleads and incorporates by reference,  
12 as if fully set forth again herein, the allegations contained in  
13 Paragraphs 1 through 61 of this complaint and incorporates them  
14 herein as if separately repled.

15 63. Plaintiff is informed and believes and therefore  
16 alleges that the facilities at the subject Union Square are  
17 buildings, structures or related facilities within the meaning  
18 of California Government Code sections 4450 and 4451, and which  
19 were built, maintained or leased with public funds. Plaintiff  
20 is further informed and believes and therefore alleges that the  
21 governmental defendants and their predecessors in interest, as  
22 joint tortfeasors and joint venturers, have constructed,  
23 altered, or repaired parts of such subject Union Square  
24 facilities within the meaning of California Government Code  
25 sections 4450 and 4451 since July 1, 1968, thereby requiring  
26 provision of access to persons with disabilities, as required by  
27 law. Further, since January 1, 1982, construction or alteration  
28 at such facilities also triggered access requirements pursuant

1 to section 4456 Government Code and Title 24 of the California  
2 Code of Regulations.

3 64. The named defendants participate in the operation  
4 of the subject public accommodation, subjecting the property and  
5 all such defendants to the requirements of sections 4450ff  
6 Government Code.

7 65. Plaintiff has standing to enforce the provisions  
8 of sections 4450ff Government Code under section 19953 Health &  
9 Safety Code.

10 66. The actions and inactions of the defendants as  
11 herein alleged constitute a denial of access to and use of the  
12 described public facilities by physically disabled persons  
13 within the meaning of California Government Code sections 4450  
14 et seq. Plaintiff has no adequate remedy at law as to facing  
15 the recurring damages facing him each time that he and other  
16 similarly situated disabled persons return to these inaccessible  
17 facilities, and unless the relief requested herein is granted,  
18 plaintiff and many other physically disabled persons will each  
19 suffer irreparable harm in that their fundamental right to  
20 accessible public facilities while patronizing the subject Union  
21 Square will be denied and abridged. Plaintiff seeks injunctive  
22 relief under section 19953 Health & Safety Code (governing  
23 enforcement of actions under sections 4450ff Government Code),  
24 and recovery of reasonable attorneys' fees and costs.

25 WHEREFORE, plaintiff prays that this court grant  
26 relief as requested hereinbelow.

27 ////  
28

**SIXTH CAUSE OF ACTION:**

**VIOLATION OF CALIFORNIA'S DISABLED RIGHTS ACTS**

**(§§54, 54.1 and 55 CIVIL CODE)**

67. Plaintiff repleads and incorporates by reference, as if fully set forth again herein, the allegations contained in paragraphs 1 through 66 of this complaint and incorporates them herein as if separately repled.

68. The facilities were directly or indirectly constructed, maintained or leased with local, state, and federal funds, subjecting such facilities to the requirements of sections 4450ff Government Code, Title II of the Americans With Disabilities Act and section 504 of the Rehabilitation Act of 1973.

69. The aforementioned acts and omissions of defendants and each of them constitute a denial of equal access to and use and enjoyment of these facilities by persons with disabilities, including plaintiff CRAIG YATES. Said acts and omissions are also in violation of provisions of Title 24 of the California Administrative Code (later known as the California Code of Regulations and the California Building Code.)

70. On or about the above dates complained of, and on multiple occasions thereafter, including occasions of deterrence, plaintiff CRAIG YATES suffered violations of sections 54 and 54.1 Civil Code in that he was denied full and equal access to the subject Union Square facilities on the basis that he was physically disabled persons.

71. Plaintiff is further informed and believes that before and after such dates, the named defendants and each of

1 them were made aware orally, in writing, and through the media  
2 and governmental sources of the inaccessibility of their public  
3 facility/business to disabled persons, such as plaintiff, and  
4 other persons with disabilities similarly situated, and of the  
5 federal and state legal obligations of owners and operators of  
6 public facilities to make their facilities accessible to  
7 disabled persons. Despite being informed of such effect on  
8 disabled persons and the manner in which their practices and  
9 lack of acceptable facilities were continuing to discriminate  
10 against disabled persons on a day-to-day basis, said defendants  
11 and each of them knowingly and willfully failed and refused to  
12 take any steps to rectify this situation and to provide full and  
13 equal access for disabled persons to each public facility  
14 referred to herein.

15 72. At all times since plaintiff's above specified  
16 complaints, and on information and belief for periods prior to  
17 this date, defendants were on notice of the requirements of the  
18 law relating to provision for full and equal disabled access.  
19 Especially as defendants were on full notice, each day that  
20 defendants have continued to deny access to disabled persons  
21 constitutes a new and distinct violation of plaintiff's right to  
22 full and equal access to this public facility, in violation of  
23 Sections 54 and 54.1, et seq. Civil Code. In the event his  
24 Government Claim is denied, and in the event of a default  
25 judgment against any particular defendant, plaintiff will seek  
26 an injunction requiring provision of all access called for in  
27 this complaint, plus daily damages of \$4,000 per day from the  
28 date of plaintiff's filing of this complaint, and for each day



1 during the six months preceding the filing of the original  
2 government claim, plus reasonable attorneys' fees, litigation  
3 expenses and costs as set by the court, until the site is  
4 brought into full compliance with state and federal access laws  
5 protecting the rights of the disabled, or, alternatively, until  
6 the date of entry of default.

7 73. As a result of the denial of equal access to  
8 defendants' facilities due to the acts and omissions of  
9 defendants and each of them in owning, operating, and  
10 maintaining this subject public facility, plaintiff CRAIG YATES  
11 suffered violations of his Civil Rights including but not  
12 limited to rights under sections 54 and 54.1 Civil Code, and  
13 suffered physical injury and discomfort, emotional shock, mental  
14 and emotional distress, embarrassment and humiliation, all to  
15 his damages as hereinafter stated. Defendants' actions and  
16 omissions to act constituted discrimination against plaintiff on  
17 the sole basis that he was physically disabled and unable,  
18 because of the architectural barriers created by the defendants  
19 in violation of the subject laws, to use the public facilities  
20 on a full and equal basis as other persons.

21 74. Plaintiff seeks damages on a continuing and  
22 ongoing basis for the period preceding within the six months  
23 before the filing of his government claim, and the continuous  
24 and ongoing damages suffered thereafter.

25 75. Subject to the terms of the preceding paragraph,  
26 plaintiff also seeks damages against all defendants for the  
27 violation of his rights as a person with a disability during his  
28 patronage at the subject Union Square, and on multiple visits



1 thereafter, according to proof, pursuant to section 54.3 Civil  
2 Code, including a trebling of all statutory and actual damages,  
3 general and special, available pursuant to section 54.3 Civil  
4 Code. Plaintiff also seeks such damages for such defendants'  
5 continuing to maintain such facilities in an inaccessible  
6 condition since date of his earliest visit (within six months of  
7 the filing of his Government Claim), and continuing on a daily  
8 basis to the date of the filing of the original complaint, and  
9 thereafter until defendants provide full and equal access.  
10 Plaintiff also seeks injunctive relief against all defendants  
11 pursuant to section 55 Civil Code, requiring defendants to make  
12 their facilities accessible to disabled persons in each of the  
13 respects complained of herein.

14           76. As a result of defendants' acts and omissions in  
15 this regard, plaintiff CRAIG YATES has been required to incur  
16 legal expenses and hire an attorney in order to enforce  
17 plaintiff's rights and enforce provisions of the law protecting  
18 access for persons with disabilities and prohibiting  
19 discrimination against persons with disabilities. Plaintiff  
20 therefore seeks recovery in this lawsuit for all reasonable  
21 attorneys' fees and costs incurred pursuant to the provisions of  
22 sections 54.3 and 55 Civil Code. Additionally, plaintiff's  
23 lawsuit is intended not only to obtain compensation for damages  
24 to plaintiff, but also to require the defendants to make their  
25 facilities accessible to all disabled members of the public,  
26 conferring a significant public benefit, and justifying  
27 attorneys' fees, litigation expenses and costs pursuant to the  
28 provisions of section 1021.5 Code of Civil Procedure.

1 WHEREFORE, plaintiff prays for damages and declaratory  
2 and injunctive relief as hereinafter stated.

3 SEVENTH CAUSE OF ACTION:

4 DAMAGES AND INJUNCTIVE RELIEF FOR VIOLATION OF TITLES II & III  
5 OF THE AMERICANS WITH DISABILITIES ACT  
6 UNDER CALIFORNIA'S DISABLED RIGHTS ACT

7 77. Plaintiff repleads and incorporates by reference,  
8 as if fully set forth again herein, the allegations contained in  
9 paragraphs 1 through 76 of this complaint and incorporates them  
10 herein as if separately repled.

11 78. Each violation of the Americans With Disabilities  
12 Act of 1990, as complained of in the First & Third Causes of  
13 Action hereinabove (the contents of which cause of action is  
14 incorporated herein as if separately repled), is also a  
15 violation of section 54(c) and section 54.1(d) California Civil  
16 Code, further and independently justifying damages, injunctive  
17 and other statutory relief per section 54.3 and 55 California  
18 Civil Code.

19 79. Plaintiff seeks damages on a continuing and  
20 ongoing basis for the period preceding within the six months  
21 before the filing of his original government claim, and the  
22 continuous and ongoing damages suffered thereafter. As to  
23 plaintiff's supplemental Government Claim, per his supplemental  
24 government claim now pending, plaintiff will seek such damages  
25 for the further barriers therein specified (for the six months  
26 preceding the original filing) when and if the supplemental  
27 claim is denied.

28 80. Plaintiff has no adequate remedy at law, and

1 unless the relief requested herein is granted, plaintiff will  
2 suffer irreparable harm in that they will continue to be  
3 discriminated against and denied access to the specified public  
4 facilities. Because plaintiff seeks improvement of access for  
5 persons with disabilities, which will benefit a significant  
6 portion of the public, plaintiff seeks attorneys' fees pursuant  
7 to section 1021.5 California Code of Civil Procedure, section  
8 54.3 and 55 Civil Code; and 19953 Healthy & Safety Code.

9 WHEREFORE, plaintiff prays for relief as hereinafter  
10 stated.

11 **EIGHTH CAUSE OF ACTION:**

12 **DAMAGES AND INJUNCTIVE RELIEF UNDER THE UNRUH CIVIL RIGHTS ACT**  
13 **FOR VIOLATION OF TITLES II & III OF THE AMERICANS WITH**  
14 **DISABILITIES ACT**

15 81. Plaintiff repleads and incorporates by reference,  
16 as if fully set forth again herein, the allegations contained in  
17 Paragraphs 1 through 80 of this complaint and incorporates them  
18 herein as if separately repled.

19 82. Each violation of the Americans With Disabilities  
20 Act of 1990, as complained of in the First & Third Causes of  
21 Action hereinabove (the contents of which causes of action is  
22 hereby incorporated herein as if separately repled), is also a  
23 violation of section 51(f) of the Unruh Civil Rights Act,  
24 further and independently justifying damages of \$4,000 per  
25 offense, injunctive relief, and other statutory relief, all as  
26 previously pled, per sections 52 and common law decision.

27 83. Plaintiff seeks damages on a continuing and  
28 ongoing basis for the period preceding within the six months

1 before the filing of original government claim, and the  
2 continuous and ongoing damages suffered thereafter.

3 84. As a result of defendants' acts and omissions in  
4 this regard, plaintiff has been required to incur legal expenses  
5 and attorney fees, as provided by statute, in order to enforce  
6 plaintiff's rights and to enforce provisions of the law  
7 protecting access for disabled persons and prohibiting  
8 discrimination against disabled persons. Plaintiff therefore  
9 seeks recovery of all reasonable attorneys' fees, litigation  
10 expenses (including expert fees) and costs, pursuant to the  
11 provisions of Section 52 of the Civil Code. Additionally,  
12 plaintiff's lawsuit is intended not only to obtain compensation  
13 for damages to plaintiff, but also to require the defendants to  
14 make their facilities accessible to all disabled members of the  
15 public, justifying "public interest" attorneys' fees pursuant to  
16 the provisions of California Code of Civil Procedure Section  
17 1021.5.

18 **NINTH CAUSE OF ACTION:**

19 **VIOLATION OF CALIFORNIA GOVERNMENT CODE §11135**  
20 **DISCRIMINATION UNDER PROGRAM RECEIVING FINANCIAL ASSISTANCE**  
21 **FROM THE STATE**

22 **(Against Defendants UNION SQUARE; CITY AND COUNTY OF SAN**  
23 **FRANCISCO; CITY OF SAN FRANCISCO UPTOWN PARKING CORPORATION; and**  
24 **DOES 1 through 50, Inclusive)**

25 85. Plaintiff repleads and incorporates by reference,  
26 as if fully set forth again herein, the factual allegations  
27 contained in paragraphs 1 through 84 of this complaint and  
28 incorporate them herein as if separately replied in full.

1           86. The administration, supervision and maintenance  
2 by the Government Defendants of the specified public facilities  
3 and of the activities therein are funded, at least in part, by  
4 the State of California through grants, credits, and other  
5 funding measures.

6           87. The defendants have failed to make these  
7 facilities accessible to and usable by disabled persons in  
8 violation of California Government Code section 11135 *et seq.*

9           88. Pursuant to recent amendments of section 11135, a  
10 civil action for injunctive relief is available to remedy  
11 violations.

12           89. Plaintiff has no adequate remedy at law, and  
13 unless the relief requested herein is granted, plaintiff and  
14 other similarly situated disabled persons will suffer  
15 irreparable harm in that they will continue to be discriminated  
16 against and denied access to the specified public facilities.  
17 Because plaintiff seeks improvement of access for persons with  
18 disabilities, which will benefit a significant portion of the  
19 public, plaintiff seeks attorneys' fees pursuant to section  
20 1021.5 California Code of Civil Procedure.

21           Wherefore, plaintiff prays that the court grant relief  
22 as requested hereinbelow.

23                           **TENTH CAUSE OF ACTION**

24                           **(Declaratory Relief)**

25           90. Plaintiff repleads and incorporates by reference,  
26 as if fully set forth again herein, the allegations contained in  
27 Paragraphs 1 through 89 of this complaint and incorporates them  
28 herein as if separately repled.

1           91. A present and actual controversy exists among the  
2     respective rights and obligations of plaintiff and defendants,  
3     and separately, as to the obligations that have been impressed by  
4     the aforementioned statutes against the Union Square property  
5     irrespective of past or future ownership. Plaintiff requests a  
6     judicial determination of his rights and such obligations in a  
7     declaration, and also as to whether and to what extent  
8     defendants' conduct and the current configuration of the property  
9     violates applicable law.

10           92. Such a declaration is necessary and appropriate at  
11     this time in order that Plaintiff may ascertain his rights. Such  
12     declaration is further necessary and appropriate to prevent  
13     further harm or infringement of Plaintiff's Civil Rights.

14           Wherefore, plaintiff prays the court grant relief as  
15     requested hereinbelow.

16                           PRAYER FOR RELIEF

17           Plaintiff prays that this Court award damages and  
18     provide relief as follows:

19           1. Grant injunctive relief requiring that those of  
20     the defendants which currently own, operate, control or lease  
21     the subject premises, repair the premises and render them safe  
22     to disabled persons, and modify their policies and procedures,  
23     and otherwise provide "full and equal access" to the public  
24     areas herein complained of, and make such facilities "readily  
25     accessible to and usable by individuals with disabilities,"  
26     according to the standards of sections 51, 54 and 54.1 et seq.  
27     of the California Civil Code; Title 24 of the California  
28     Administrative Code; Sections 19955-19959 of the Healthy &

1 Safety Code; Sections 4450-4456 of the California Government  
2 Code; section 11135 of the California Government Code; section  
3 504 of the Rehabilitation Act of 1973; Title II of the Americans  
4 With Disabilities Act of 1990; the Americans With Disabilities  
5 Act Access Guidelines; and provide full and equal access to  
6 physically disabled persons, including plaintiff, in all manners  
7 required by such statutes and government regulations;

8 2. Retain jurisdiction over the defendants until  
9 such time as the Court is satisfied that defendants' unlawful  
10 policies, practices, acts and omissions complained of herein no  
11 longer exist, and will not recur;

12 3. Issue a declaratory judgment that defendants'  
13 actions and omissions, and failures, including to modify the  
14 premises in compliance with the law, and to make reasonable  
15 accommodations and reasonable modifications for plaintiff and  
16 other similarly situated disabled persons violates the rights  
17 plaintiff and other similarly situated persons rights under the  
18 Health & Safety Code Sections 19955-19959; Government Code  
19 Sections 4450-4455 & 11135; Civil Code Sections 51, 54, and 54.1  
20 et seq.; Americans With Disabilities Act of 1990, 42 U.S.C.  
21 sections 12101, et seq., and the regulations promulgated  
22 thereunder; section 504 of the Rehabilitation Act of 1973, 29  
23 U.S.C. section 794, and the regulations promulgated thereunder;  
24 and the due process clauses of the United States and California  
25 Constitutions.

26 4. Issue a declaratory judgment regarding the  
27 obligations impressed by law against the Union Square, and  
28 declaring that plaintiff is entitled to disabled accessible and

1 usable subject Union Square facilities including its parking  
2 facilities, paths of travel, and counter facilities, and other  
3 facilities, so that they may make use of the public facilities  
4 and participate in the activities offered by defendants without  
5 suffering discrimination or impediment on the basis of his  
6 disability;

7 5. Because defendants have now formally denied  
8 plaintiff's Government Claim, plaintiff seeks an award of  
9 statutory and "actual" damages against all defendants, including  
10 general damages and special damages, according to proof, against  
11 such defendants pursuant to sections 52 and 54.3 Civil Code, and  
12 that these damages be trebled;

13 6. Award damages against all defendants pursuant to  
14 section 504 of the Rehabilitation Act.

15 7. Award damages against the government entity  
16 defendants pursuant to Title II of the Americans With  
17 Disabilities Act.

18 8. Award prejudgment interest on all compensatory  
19 damages;

20 9. Award all costs of this proceeding and all  
21 reasonable attorneys' fees, litigation expenses and costs as  
22 provided by law, including but not limited to those recoverable  
23 pursuant to the provisions of sections 54.3 and 55 Civil Code,  
24 section 1021.5 Code of Civil Procedure, section 19953 Health &  
25 Safety Code, section 505 of the Americans With Disabilities Act,  
26 and section 504a of the Rehabilitation Act of 1973; and

27 10. Grant such other and further relief as this Court

28 ////



1  
2 may deem just and equitable.

3  
4 Dated: August 7, 2007

Thimesch Law Offices

5 TIMOTHY S. THIMESCH

6  
7   
8

9  
10 Attorneys for Plaintiff

11 CRAIG YATES

12 DEMAND FOR JURY TRIAL

13 Plaintiff demands a jury on all claims for which a  
14 jury is permitted.

15  
16 Dated: August 7, 2007



17 Attorneys for Plaintiff  
18 CRAIG YATES